

January 22, 2021. OFLC Announces Plan for Reissuing Certain Prevailing Wage Determinations Issued under the Department’s Interim Final Rule of October 8, 2020; Compliance with the District Court’s Modified Order.

On January 20, 2021, the U.S. District Court for the District of Columbia in *Purdue University, et al. v. Scalia, et al.* (No. 20-cv-3006) and *Stellar IT, Inc., et al. v. Scalia, et al.* (No. 20-cv-3175) issued a modified order governing the manner and schedule in which the Office of Foreign Labor Certification (OFLC) will reissue certain prevailing wage determinations (PWDs) that were issued from October 8, 2020 through December 4, 2020, under the wage methodology for the Interim Final Rule (IFR), *Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States*, 85 FR 63872 (Oct. 8, 2020).

The Department is taking necessary steps to comply with the modified order issued by the District Court. Accordingly, OFLC will be reissuing certain PWDs issued under the Department’s IFR in two phases.

Employers that have already submitted a request in response to the December 3, 2020 announcement posted by OFLC have been issued a PWD and do not need to resubmit a second request for reissuance or take other additional action.

PHASE I: High Priority PWDs

Within 15 working days of receiving the requested list of named Purdue Plaintiffs and Associational Purdue Plaintiffs from Plaintiffs’ counsel, OFLC will reissue all PWDs that have not yet been used in the filing of a Labor Condition Application (LCA) or PERM application as of January 20, 2021, and that fall into one or more of the following categories:

1. PWDs issued to all named Plaintiffs in the *Purdue* case and members of the Associational Plaintiffs in that case;
2. PWDs that an employer requested to support the filing of a LCA under the H-1B, H-1B1, and E-3 visa classifications;
3. PWDs issued that resulted in the default wage rate of \$100.00 per hour or \$208,000 per year; and
4. PWDs issued for job opportunities in healthcare related occupations, as defined by the Standard Occupational Classification system codes 29-0000 and 31-0000 series.

OFLC will individually email each requestor’s point-of-contact identified on the Form ETA-9141, *Application for Prevailing Wage Determination*, who received a PWD under the IFR and who falls into one or more of the four categories described above to provide notice that OFLC will reissue the applicable PWD automatically. Once completed, OFLC will email the requestor’s point-of-contact a copy of the reissued PWD.

Finally, to provide the general public with transparency on the Department’s commitment, OFLC will make publicly available on the Foreign Labor Application Gateway (FLAG) System website, at <https://flag.dol.gov/>, a list of all PWDs that are eligible for Phase I with weekly updates identifying the date on which OFLC reissued the applicable PWD.

PHASE II: Emergency Situations

No later than March 2, 2021, OFLC will reissue PWDs for all the requests received under Phase II as described below.

For employers with PWDs issued under the IFR that are not eligible for Phase I, the Department is extending the deadline to request reissuance of a PWD from January 4, 2021, to February 8, 2021, ***only for employers attesting that they have an emergency situation necessitating reissuance of a PWD***. An emergency situation includes the following circumstances:

- PWDs issued in support of a labor market test conducted under the PERM program that is set to expire in the next 60 days;
- PWDs issued to support the filing of a PERM application within the next 60 days to allow for extension of H-1B status or otherwise is required for a foreign worker beneficiary to be able to remain in the U.S. or maintain work authorization;
- PWDs issued to support the filing of a PERM application where a child of a foreign worker beneficiary potentially will age out within one year; or
- Any other PWD issued where the employer attests to having an emergent need for a reissuance not otherwise covered in this list.

OFLC will individually email each requestor's point-of-contact identified on the Form ETA-9141 who received a PWD under the IFR and not yet requested a reissuance to alert them to the extended opportunity to request reissuance of a PWD no later than February 8, 2021. PWDs that OFLC has already reissued or those OFLC determined were used in connection with the filing of a LCA or PERM application will not receive these emails, as such PWDs are not eligible for reissuance.

Employers with emergency situations must affirmatively request reissuance of a PWD by accessing the redetermination function in their FLAG system account **OR** contacting the National Prevailing Wage Center (NPWC) by email at FLC.PWD@DOL.GOV, and including the words "IFR Request for Emergency Review" **followed by** the full case number on the Form ETA-9141 in the subject line of the email. ***No documentation supporting the request based on an emergency situation is needed. However, a statement from the employer or requestor's point-of-contact attesting to an emergency situation is required.***

Finally, to provide the general public with transparency on the Department's commitment, OFLC will make publicly available on the FLAG System website, at <https://flag.dol.gov/>, an aggregate report, updated weekly, identifying the total reissuance requests received, total PWDs pending reissuance, and total PWDs reissued.

Additional Notes:

- Employers who received an OES-based PWD under the IFR and filed a second PWD requesting use of a non-OES wage source may withdraw the second PWD application at any time and request reissuance of the initial OES-based PWD, provided the employer has an emergency situation.
- PWDs issued using a wage source other than the OES are not subject to the agreement reached by the parties or the reissuance process created to comply with this agreement.
- Employers are reminded that they may choose to file LCAs at any time without an NPWC-issued PWD, using approved sources such as OFLC's online OES wage database at <https://www.flcdatabcenter.com/>; a private wage survey; a Collective Bargaining Agreement; a Davis Bacon Act wage; or a McNamara O'Hara Service Act wage, in accordance with the regulations at 20 CFR 655.731.